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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR		ATTORNEY DOCKET NO.
09/544,034	04/05/00	SAERO	A	DINLIN00-042

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EXAMINER	
WANG, S	
ART UNIT	**PAPER NUMBER**
1617	8

DATE MAILED: 07/23/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

PTO-90C (Rev.11/00)

1- File Copy

Offic Action Summary	Application No.	Applicant(s)	
	09/544,084	SAEBO ET AL.	
	Examiner	Art Unit	
	Shengjun Wang	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 May 2001* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *7* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Receipt of the amendments and remarks submitted May 11, 2001 is acknowledged.

Claim Objections

1. Claims 6, 12, 18 and 24 are objected to because of the following informalities: the word "oxidant" in the claims appears to be a typographic error of "antioxidant". Appropriate correction is required.

Double Patenting Rejections

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-30 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 9-16 of U.S. Patent No. 6,015,833 in view of Cook et al. (U.S. 5,760,082). Patent '833 claim food product containing conjugated linoleic acid. The Patent does not claim food product contains the derivatives of conjugated linoleic acid, e.g., ester, or the employment of alcohols or vitamin E in the food products. However, Cook teach that the derivative of conjugated linoleic acid, including esters, are similarly useful as the free acid in food products. See, column2, lines 62-67. It is well known that alcohols or vitamin E are frequently added to food products. Therefore, it would have been obvious for an ordinary skill in

the art at the time the claimed invention was made to making food product containing conjugated linoleic acid derivatives, including ester, alcohols or vitamin E.

3. Applicants' remarks about the double patenting rejection have been considered, but are not persuasive. Note Patent 5,760,082 was cited to show the art relative to the claimed invention which helps to determine the level of ordinary skill in the pertinent art. See, MPEP 804 B (1).

Claim Rejections 35 U.S.C. §103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cook et al. (U.S. Patent 5,760,082) in view of Lievense et al. (U.S. patent 6,159,525) and Baltes et al. (U.S. Patent 3,162,658) for reasons essentially same as those set forth in the prior office action. The employment of any antioxidant with CLA in food product (amended claims 6, 12, 18 and 24, which exclude vitamin E as antioxidant) would be obvious further in view of Cain et al. (WO 99/18320, IDS 35). Cain teaches that CLA is known to be sensitive to oxygen and addition of antioxidant to a composition comprising CLA is suggested. See, page 6, lines 29-36 and claims 10 and 13-15.

6. Applicants' remarks regarding the obviousness of the claimed invention to prior art have been fully considered, but are not persuasive for reasons discussed below.

7. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the

teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the reference suggested the employment of vitamin E (tocopherols) with CLA. See Lievense. The citation of Baltes et al. (U.S. Patnet 3,162,658) is to show the level of ordinary skill in the pertinent art. Further, method of making a compound does not render patentable weight to a composition comprising the compound.

8. Regarding the remarks about the antioxidants, note the claimed invention (except claims 6, 12, 18 and 24) is directed to a method of making food product comprising adding an antioxidant selected for a group of compounds. The group of compounds including tocopherols (vitamin E). Lievense suggests that vitamin E be used with CLA in the food product. Lievense's suggestion therefore meet the limitation as claimed herein. Vitamin E is an antioxidant employed herein. Further, as stated in the prior office action, a method of making an otherwise old or obvious composition by mixing the known components of the composition is not seen to be inventive.

9. Nothing unobvious is seen in the claimed inventions

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang, Ph.D. whose telephone number is (703) 308-4554. The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie, J.D., can be reached on (703) 308-4612. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

S. Wang

Shengjun Wang

AU 1617

July 21, 2001

RUSSELL TRAVERS
PRIMARY EXAMINER
GROUP 1200